

Water Adjudication Advisory Committee
Meeting Minutes
September 12, 2017

Attendees who spoke: John Bloomquist, Michael Cusick, Bob Goffena, James DuBois, and Jay Weiner. Chief Water Judge Russ McElyea presided.

A meeting was held by telephone on September 12, 2017. Water Adjudication Advisory Committee members, Water Policy Interim Committee (WPIC) members, and various members of the public were invited to attend.

Judge McElyea opened the call by reviewing discussion points from the previous meeting, including: removal of legislative and other barriers to allow Water Court issuance of final decrees; issuance of separate final decrees for state-based and reserved water rights; and institution of a deadline to file motions to amend.

Judge McElyea opened the floor to a continuation of the discussion on the above topics. Attendees first discussed “decoupling” state-based and reserved rights for issuance of final decrees. This topic brought up discussions of potential McCarran Amendment issues and future administration and distribution concerns.

Attendees also brought up the inconsistent definition of a final decree in statutes, the Water Right Claim Examination Rules, and other sources, and the need to clearly define a final decree consistently across all sources. Some attendees expressed concern regarding how to incorporate changes made to water rights through the DNRC change authorization process. Additional questions arose, including: Should final decrees include permits? When and will the DNRC reevaluate claims that have an approved change authorization where the underlying water right was changed during the Water Court’s adjudication? How do we handle unauthorized post-1973 changes?

Some committee members expressed the view that the final decree should allow for efficient administration and distribution, and should therefore reflect current, on-the-ground use of water.

Discussions then turned to whether a deadline should be set for filing motions to amend. The attendees felt it was important to allow for clerical corrections via Rules 59 and 60, M. R. Civ. P.

The call concluded with John Bloomquist’s offer to contact the members to set up another Advisory Committee meeting before the next WPIC meeting.